

SERVICE DATE - JUNE 8, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 140)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT—  
IN LANCASTER AND GAGE COUNTIES, NE, AND MARSHALL COUNTY, KS

Decided: June 6, 2001

On December 17, 1999, a decision and certificate of interim trail use or abandonment (CITU) was served<sup>1</sup> authorizing a 180-day period for the City of Beatrice, the Nebraska Trails Foundation, Inc. (Foundation), and the Lower Big Blue Natural Resources District (District) to negotiate an interim trail use/rail banking agreement with Union Pacific Railroad Company (UP) for a 57.72-mile rail line known as the Beatrice Branch extending from milepost 66 near Jamaica, NE, to milepost 125 near Marietta, KS,<sup>2</sup> in Lancaster and Gage Counties, NE, and Marshall County, KS. The negotiating period under the CITU expired on June 14, 2000, but was extended through June 9, 2001, by decisions served August 23, and December 6, 2000.

On April 20, 2001, the Beatrice Branch Landowners Association (Association) filed a letter urging that the Board not extend the negotiating period beyond June 9, 2001, because, they maintain, Foundation and other interested groups already have been given more than sufficient time to put a trail purchase agreement together. Association argues that both District and the Board of Supervisors of Gage County (Gage County Board), assertedly the governmental entities with the most clear jurisdiction over the proposed trail, have voted against continuing trail use negotiations. In addition to the potential for trespassing, Association members are concerned that liability insurance costs will increase, the land will be removed from the tax rolls, and reversionary property rights will not vest if the line is converted to trail use. Accordingly, Association submits that a further extension of the negotiating period would have a devastating effect on the quality of the human environment for the adjoining landowners. A letter submitted by facsimile on June 1, 2001, by the Gage County Board also opposes extension of the trail use negotiating period beyond June 9, 2001, noting the county board's view that trail use proponents have had sufficient opportunity to pursue trail use.

While the letters from the Association and the Gage County Board did not contain a certificate of service, as required by the Board's rules at 49 CFR 1104.12, or otherwise indicate

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<sup>1</sup> A corrected decision was served on December 22, 1999.

<sup>2</sup> The track mileage is 1.28 miles less than the milepost differential because a track relocation on the line between Beatrice and Holmesville, NE, created a milepost discontinuity. (Milepost 101.72 now coincides with milepost 103.)

that copies were served on all parties of record, they will nonetheless be considered. The objections raised by the letters, however, do not provide a basis for the Board to end the opportunities available to trail use proponents under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). Indeed, the Board's authority to issue a CITU under the Trails Act is ministerial and extends only to voluntary agreements entered into between the railroad and the trail user. The Board's discretion is limited to determining whether the statute has been properly invoked and the statutory requirements regarding rail banking and the trail user's assumption of financial and managerial responsibility are met. When the Trails Act is properly invoked, the Board must issue a CITU. See, e.g., Georgia Great Southern Division, South Carolina Central Railroad Co., Inc.—Abandonment and Discontinuance Exemption—Between Albany and Dawson, in Terrell, Lee, and Dougherty Counties, GA, Docket No. AB-389 (Sub-No. 1X) (STB served Apr. 16, 1999).<sup>3</sup>

By letters filed May 1 and 17, 2001, respectively, UP and Foundation request an extension of the negotiating period for an additional 180 days. They submit that, although discussions are continuing in good faith, Foundation and several other entities need additional time to arrange for financing for purchase of the right-of-way for trail use.

UP is willing to continue trail use negotiations and has shown that additional time is necessary to complete those negotiations. Under the circumstances, an extension of the negotiating period is warranted and will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the CITU negotiating period will be extended for an additional 180 days from June 9, 2001.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

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<sup>3</sup> Nor does the Trails Act impose a time limit for negotiating trail use agreements. Rather, the 180-day standard time frame for negotiating was set in Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) to encourage parties to complete negotiations expeditiously, if possible. Thus, where the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the negotiating period may be extended. See Fox Valley & Western Ltd.—Abandonment Exemption—in Portage and Waupaca Counties, WI, Docket No. AB-402 (Sub-No. 3X) (STB served Mar. 28, 1996); and Birt v. Surface Transp. Bd., 90 F.3d 580, reh'g denied, 98 F.3d 644 (D.C. Cir. 1996).

It is ordered:

1. The negotiating period is extended to December 6, 2001.
2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary